

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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JUAN CURIEL-SALAZAR

ORDER DENYING CERTIFICATE OF  
APPEALABILITY

Petitioner,

v.

Cr. No. 2:05-0164 WBS  
Civ. No. 2:06-1159 WBS

UNITED STATES OF AMERICA,

Respondent.

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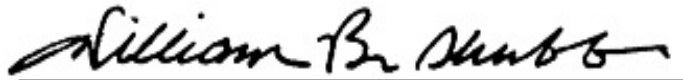
Defendant Juan Curiel-Salazar has filed a request for a certificate of appealability pursuant to 28 U.S.C. § 2253(c) from this court's order of July 27, 2006. Section 2253(c) allows for a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c) (2).

Defendant seeks to appeal the issue of whether he was denied effective assistance of counsel at the time he entered his guilty plea. This is not the same issue that he sought to raise in his petition to this court under 28 U.S.C. § 2255. In his petition to this court, defendant's sole claim was that his court appointed counsel, Federal Defender Daniel J. Broderick,

1 rendered ineffective assistance by failing to file notice of  
2 appeal on his behalf as directed by defendant. Now, he seeks to  
3 appeal the issue of whether Mr. Broderick rendered ineffective  
4 assistance by failing to tell the court at the time of the Rule  
5 11 colloquy that the written plea agreement was not the true  
6 agreement, but that instead the government had agreed to  
7 something altogether different than what was set forth in the  
8 signed agreement.

9           The court will not certify an appeal on grounds that  
10 were never presented to this court. Defendant's application for  
11 a certificate of appealability is therefore DENIED.<sup>1</sup>

12 Dated: September 28, 2006

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15 WILLIAM B. SHUBB  
16 UNITED STATES DISTRICT JUDGE  
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27           <sup>1</sup> The court does not need to address the question of  
28 whether defendant's request, filed just short of two months after  
the order from which he seeks to appeal, is timely.